In the

United States Circuit Court of Appeals

For the Ninth Circuit

No._____

PETER CHORAK, Plaintiff in Error

vs.

UNITED STATES OF AMERICA, Defendant in Error

UPON WRIT OF ERROR TO THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

Brief of Defendant in Error

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STATEMENT OF CASE

Witnesses on behalf of the government testified that they bought liquor from the plaintiff on the 10th day of May, 1925, at his place of business, which was ostensibly a gas station near Seattle, and that certain liquor was found there which was gathered

from a number of bottles. The defendant was also charged with a prior conviction of sale.

ARGUMENT

I.

The first assignment of error raises the question of previous acts of the defendant. A careful reading of the testimony of the witness of the government will show this contention to be erroneous. Counsel for the defense proved by his cross-examination that the witness had been drunk the day before he called upon the defendant, and the only thing proven on redirect was the fact that he told the agents where he got the liquor, and the testimony does not show that the witness got it from the defendant. The jury was instructed to disregard the question that was propounded the witness, and it was never answered. There was plainly no error in sustaining the objection. Consequently the authorities cited by counsel are not in point.

II.

The next assignment of error raised is the proof of the prior conviction. The facts show that the records of the clerk did not show what count in cause 7981 the defendant had been previously convicted of,

and consulted the minutes he had made in court and they showed that counts I, II, and IV had been dismissed, and the defendant had been sentenced upon the other, then the clerk read the only remaining count, which charged sale. There is no given way that the previous conviction must be proved, the law only requires that it be proved. It was proven that he had been convicted of sale, which count of the previous indictment was read, and that was sufficient. The court could not sentence a defendant, and he could not plead guilty to nothing, consequently he must have pleaded guilty to sale, and that is what the record reveals in this case. No judgment was corrected, but the clerk was permitted to use his original notes made in the court room at the time of the sentence of the defendant on the previous case.

III.

The question raised by assignment No. V is fully covered in the instructions of the court, Tr. 45, in which the court directed the jury to entirely disregard the matter. It certainly was not prejudicial to the defendant. Counsel for the defense did more to prejudice his client's rights than did the government by directing the jury's attention to the matter so forcibly.

Berlin v. U. S., 142, 497 at 498, par. 5.

IV.

The court instructed the jury if the liquor which was found was dregs, which had been brought in by the defendant he would not be guilty, but if the liquor which was found was some that had remained in the bottle afterwards which he knew about he would be guilty. I think the court's instruction was proper upon this proposition, and clearly stated the law. The defendant admitted having them in his possession, and if it was liquor fit for beverage purposes, then he would be guilty, no matter how small the quantity. A man may have had a thousand bottles, and disposed of them all, except a half of a bottle, and would still be guilty. The only question was: Was it fit for beverage purposes? This was testified to by Mr. Kline, agent for the government, Tr. 31, and stands undenied.

V.

The court's instructions are set out fully in the Transcript beginning at page 41, and when read completely it is evident that they are very fair to the defendant.

Respectfully submitted,

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